United Nations A/63/326

General Assembly

Distr.: General
25 August 2008

Original: English

Sixty-third session
Item 67 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1.

* A/63/150 and Corr.1.

** The present report was submitted after the deadline so as to reflect the most recent developments.

08-48988 (E) 260908

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Summary

The present report, the first submitted by Richard Falk, examines the observance of international humanitarian and international human rights standards in the Palestinian territories occupied by Israel since 1967 during the period from January to mid-2008. It pays particular attention to the consequences of a prolonged occupation that has consistently ignored the directives of the United Nations with respect to upholding the legal rights of an occupied people.

The report also takes note of the undertaking associated with the revival of the peace process at the Annapolis summit of December 2007, in particular the expectation that Israel would freeze settlement expansion and ease restrictions on movement in the West Bank. It is discouraging that the record shows settlement growth and further restrictions on West Bank movement.

In addition, the report notes the abuse of international humanitarian law associated with the separation wall, and Palestinian fatalities, including of children, owing to Israeli use of excessive force to quell non-violent demonstrations. Attention is also drawn to abuses by Israel at border crossings, with special concern expressed with regard to the harassment and assault of Palestinian journalists. The report further focuses on the crisis in health care, especially in Gaza.

The report laments the failure of Israel to implement the recommendations of the International Court of Justice, as endorsed by the General Assembly. It calls for a further clarification of the rights of the Palestinian people by recommending that the General Assembly seek legal guidance as to the extent to which the occupation is endangering the realization of the Palestinian right of self-determination.

Contents

		Page
I.	Introduction	4
II.	Political developments: major changes in the setting of the occupation	6
III.	Significant human rights challenges: some case studies	10
	A. Freedom of expression and harassment of media personnel: the case of Mohammed Omer	10
	B. Closures and Israeli Defense Forces military operations in the West Bank: abuses against the civilian population in Nablus	12
	C. Right to peaceful assembly: demonstrations against the wall in the West Bank	13
IV.	Settlements in the Palestinian Territories and their impact on the enjoyment of human rights	14
V.	Health crisis in the Palestinian Territories	16
	A. Further infringements affecting medical patients from Gaza: Shin Bet interrogation of Palestinian medical patients at the Erez crossing	19
VI.	Recommendations	20

I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 was appointed in accordance with resolution 1993/2 A of the Commission on Human Rights, on 26 March 2008, and took up his position on 1 May 2008. The Special Rapporteur has not yet been able to visit Israel and the Occupied Palestinian Territory so as to fulfil his mandate and offer a first-hand account of the degree to which international human rights and international humanitarian law are being observed. It is the hope and intention of the Special Rapporteur to do his best to secure entry in the future. He will seek to enlist the cooperation of the Government of Israel in that effort.

2. The present report is the first to be issued since the Special Rapporteur took up his mandate on 1 May 2008. The report covers developments taking place primarily from 1 January to 31 July 2008. It is based upon reliable information gathered by human rights non-governmental organizations and international institutions, including the United Nations, which have a long record of objectivity and experience in relation to the conditions of the occupation. The Special Rapporteur takes note of positive and negative changes on the ground and in the wider regional and global setting. It is the intention of the Special Rapporteur, without political implications, to treat the Hamas administration of Gaza as "a de facto authority" for the purpose of the present report.

3. The Special Rapporteur takes particular note of the fact that the military occupation of the Palestinian territory has gone on for more than 40 years and that it possesses characteristics of colonialism and apartheid, as has been observed by the previous Special Rapporteur. Especially in the light of that background, the further prolongation of the occupation constitutes a deepening threat to and a cumulative encroachment upon the most fundamental human right of all, the right of self-determination of the Palestinian people. That consideration imparts a tone of urgency to an evaluation of Palestinian claims of a right of resistance in furtherance of self-determination and to recommendations for a greater expression of responsibility by the United Nations to resolve the Israel-Palestine conflict, taking full account of international law, and, in the interim, to take immediate steps to ensure Israeli compliance with its obligations under international humanitarian law pertaining to military occupation. In that regard, note should be taken of the refusal of Israel to comply with the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (A/ES-10/273 and Corr.1), supported by 14 of the 15 judges, and overwhelmingly endorsed by the General Assembly in its resolution ES-10/15. That general observation relating to the continuing occupation has two implications for the United Nations. First, in the context of the Annapolis peace process, the United Nations, as a member of the Quartet, has a special responsibility to ensure that steps are taken to raise confidence among all the parties that international law will be relied upon to assess rival claims of both Israel and Palestine in the course of negotiations on outstanding issues of controversy. Second, that the disregard of such a clear and authoritative message as to international legal obligations pertaining to the duties of an occupying Power, together with other evidence of disregard detailed in this report, should serve to prompt the Secretary-General, the General Assembly and other bodies of the United Nations to recognize the need to implement urgently necessary initiatives to protect the rights, and indeed the survival, of the Palestinian

people, and to induce Israel to uphold its obligations under international law. One such initiative, consistent with the recommendation of the previous Special Rapporteur, would be for the Third Committee to propose to the General Assembly a request for a new advisory opinion by the International Court of Justice on the unlawful effects of the continuing denial of the Palestinian rights to self-determination, given the prolongation and character of the occupation, especially its encroachment on Palestinian ownership and occupation of land.

4. The pre-eminent legal instrument relevant to assessing the rights and duties of an occupying Power is the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War (1949), but also relevant as expressive of the evolving customary international law, binding upon parties to the treaty, is the Geneva Protocol Additional I of 1977 Relating to the Protection of Victims to International Armed Conflict. The evidence of continuous and deliberate violation of that universally binding international treaty by Israel in its occupation of the Palestinian territory constitutes an ongoing grave situation that calls out for a unified response by the international community. It should be observed that article 1 of the Fourth Geneva Convention reads as follows: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances". It is high time to heed the call of that provision.

5. The Government of Israel has contended, since its implemented disengagement plan in 2005, that the Gaza Strip is no longer under occupation, and that for that reason, international humanitarian law is not applicable. It is the official position of Israel, often repeated, that the "belligerent occupation of the Gaza Strip" by the Israeli Defense Forces ended as of 12 September 2005 "with all of the political, security and legal ramifications involved". Israel explicitly draws the main conclusion that since "full governmental powers" were on that date "transferred to the Palestinian Authority", it no longer has the legal and moral responsibilities of an occupying Power.[1] From that perspective, the Government of Israel relies on the decision of the Israeli Supreme Court in *Albassiouni v. the Prime Minister*, according to which the Government "does not have a general duty to take care of the welfare of Strip residents". The Special Rapporteur disputes that assessment of the situation in the Gaza Strip, contending that a territory is occupied if it is under the "effective control" of a State other than that of the territorial sovereign. Israel has, since its disengagement, continued to exert strict and continuous control over the borders, entrance and exit, airspace and territorial waters of Gaza. In addition, it has mounted numerous military incursions and deadly attacks on targeted individuals, and subjected the entire civilian population of the territory to siege conditions ever since Hamas convincingly won the general legislative elections in January 2006, and it tightened the siege after Hamas took over Gaza in mid-June 2007. The establishment of a siege imposing great stress on the inhabitants of Gaza and attempts to gain international participation in that siege have made it impossible for the administering Palestinian authorities to provide for the minimum well-being of the 1.5 million inhabitants. On the basis of those considerations, it is clear beyond a reasonable doubt that from the perspective of international law, the Gaza Strip remains under Israeli occupation, with legal responsibilities attendant on being the occupying Power, and that the Geneva Conventions remain fully operative.

[1] See "Response of coordinator of activities in the territories to report of Physicians for Human Rights' report on questioning of medical patients at the Erez crossing", Ministry of Defence, State of Israel, 4 June 2008.

6. There are many aspects of the daily and continuing situation in the Occupied Palestinian Territory relevant to a legal assessment of the rights and duties of the parties. A main goal of the present report is to convey a well-evidenced understanding of the extent to which the situation in all parts of the Occupied Palestinian Territory has continued to deteriorate, reaching dangerous and non-sustainable levels of mental and physical suffering and trauma for the Palestinian people living under occupation. That counters the view that because of several developments, including the Gaza Ceasefire, the positive relations between Israel, the United States of America and the Palestinian Authority, the revival of the peace process at Annapolis and the overall decline in violent Israeli civilian or military deaths and in the incidence of terrorism, the burdens of the occupation have been eased. It does seem true that the situation for Israel has improved economically and politically during that period, but the situation of the Palestinian people has worsened. More land has been taken for settlements, which have been expanded, the crisis conditions persist in Gaza as a whole, the restrictions on movement throughout the West Bank have been maintained or tightened, and additional legal moves to expel Palestinians living in Jerusalem have been taking place. In response to the very recent approval by the Government of Israel for construction of an additional 447 housing units in the Jerusalem area, the Palestinian peace negotiator, Saeb Erekat, was quoted as saying in a Reuters dispatch, "I don't know how many times the Israelis have to do this for the international community to open its eyes. Can't the world see this is destroying the peace process?" The main theme of the present report is that the Palestinian reality is worse than ever before, with no indication of any substantial improvement.

7. The present report attempts to strike a balance between highlighting incidents that illustrate deeper general problems associated with the occupation and discussing patterns of conduct that appear to violate the human rights of the occupied people, taking due account of the rights of the occupying Power to uphold security under conditions of occupation. In this report, the Special Rapporteur devotes a chapter to the right to health, with special reference to Gaza.

II. Political developments: major changes in the setting of occupation

8. The setting of the occupation is important for a meaningful evaluation of particular events and occupation policies, resistance activities and an assessment of the overall human rights situation, to the extent that the security of the occupier permits. The overall attention to these particular dimensions of the occupation helps keep attention on the centrality of the Palestinian right to and struggle for self-determination under conditions of prolonged occupation. All changes in the wider context of Israeli-Palestinian relations provide insight into the nature of the occupation, both in terms of its oppressive character and the difficulty of improving the conditions of the Palestinian people so long as they live under occupation.

9. Following the breaching of the wall separating Egypt from the Gaza Strip as a result of explosives set by Hamas near the Rafah crossing on 23 January 2008, tens of thousands of Gazans, with some estimates running as high as 500,000, crossed the border into the Egyptian city of Rafah, seeking particularly to buy food, medicines and a variety of consumer goods unavailable in Gaza. When asked by

border guards for guidance, the Egyptian President, Hosni Mubarak, was quoted as saying, "I told them, 'Let them come to eat and buy food, then they go back, as long as they are not carrying weapons'".[2] A spokesperson for Hamas is reported to have said, "We are creating facts. We have to try to change the situation, and now we await results. We warned the Egyptian people we are hungry and dying." Many Gazans without political affiliation said in various ways, "This is the best thing Hamas has done." The situation was well summarized by an independent journalist, Allan Nairn, who wrote, "... the Gaza wall-breaking was an easy call: no people were killed, some may have been saved, and the spectacle of exodus into Egypt effectively dramatized a gross injustice".[3] Nairn's language captures the main realities illuminated in relation to the occupation, that is to say, exodus and spectacle. It was not possible to witness the events without appreciating the desperation of people long confined by a stultifying occupation that threatens human well-being, even survival, and should not be allowed to endure. In a few days, the Gazans were required to return to Gaza, the wall was repaired and the conditions of siege and confinement were re-established. It is possible that subtle changes for the better resulted from the exodus and spectacle of the departing mass from Gaza, with the events leading to a wider international understanding of the desperate state of affairs produced by the enforced isolation and confinement of the 1.5 million Gazans.

10. No causal connection has been established or acknowledged between the events associated with breaching the Rafah wall and the initiation of secret negotiations under Egyptian auspices in Cairo between representatives of the Government of Israel and Hamas, with the objective of establishing a ceasefire agreement that would end the firing of rockets into Israel from Gaza and military incursions and targeted assassinations by Israel in the Gaza Strip. At the same time, it seems difficult to resist the view that the coverage, especially the pictures broadcast worldwide, of the wall being breached, encouraged Israel to be more receptive to long-standing Hamas offers to establish a mutual ceasefire. The negotiations were rather prolonged, but in the end they were successful. On 20 June 2008, a ceasefire was declared, and despite some infractions on both sides, it has generally held.[4] The terms of the ceasefire have not been made public, but it has been assumed by informed observers that a demonstration by Hamas of its will and capacity to enforce the ceasefire on its own militant groups would be matched by an easing of the siege by Israel.

11. Hamas' efforts to enforce the ceasefire have been recognized and reciprocated by Israel in the form of easing the hardships experienced by Gazans. Israel contends that it has increased the supply of food and medicine by as much as 50 per cent, and is considering further steps designed to ease tensions and hardships. Nevertheless, because the duration and intensity of the siege, imposed on pre-existing conditions of widespread poverty and hardship, have been so severe, humanitarian conditions inside the Gaza Strip remain dire, and pose great risks of future calamities.

12. An additional aspect of those developments is the implicit recognition by Israel of the de facto governance of Gaza by Hamas. According to Meir Javedanfar,

---

[2] See *The New York Times*, 24 January 2008.

[3] See Allan Nairn, "Justified Violence: Breaking the Gaza Wall", *The Nation*, 29 January 2008.

[4] For an assessment of the ceasefire, see Uri Avnery, "The Ceasefire", *London Review of Books*, 31 July 2008.

a respected Tel Aviv Middle East specialist, "[Hamas] is the power that Israel has to deal with. It's not full diplomatic recognition, but Israel has recognized Hamas as an important party. On some issues it can't be avoided. Israel is showing that its past policy of refusing to talk to militant organizations ... is not always functional ... [and has] realized that talking to its enemies is the shortest and most cost-effective path militarily, economically and strategically".[5] Officially, Israel has not altered its formal position to the effect that Hamas is a terrorist organization, and that the ceasefire agreement should be viewed as a compromise proposal put forward by Egypt and accepted by both sides. Israel continues to insist that Hamas must unilaterally meet three conditions before it will change its formal diplomatic stance. Those conditions are recognition of Israel's right to exist as a Jewish State, affirmation of past agreements between the Palestinian Authority and Israel and renunciation of violence.

13. To a certain extent, those recent facts speak for themselves: Hamas has emerged from that process producing a ceasefire and as a partner with Israel in the administration of joint arrangements. From the Israeli side, it is also plausible to view the arrangement as an implicit recognition by Hamas of the State of Israel. It is to be hoped that that development creates some prospect that the siege of Gaza will be lifted, international economic assistance restored and a regime of occupation established that complies with international humanitarian law and upholds human rights to the extent possible, given the security situation. Future assessments of that process will likely focus upon whether Egyptian negotiations with the Palestinian Authority for a reopening of the Rafah crossing are successful and whether a prisoner exchange agreement can be worked out that includes the release of the Israeli soldier Corporal Gilad Shalit, who has been held captive for more than two years. Encouragement of those negotiations is definitely correlated with the practical prospect of improving the protection of the economic and social rights of the 1.5 million Palestinians living in Gaza, although, from a strictly legal point of view, the obligations of Israel as occupying Power are unconditional, and not contingent, especially where the fundamental rights of the general Gazan population is concerned.

14. Although the volatile relations of Hamas and Fatah within the Occupied Palestinian Territory are not part of the current mandate, the recent call by President Mahmoud Abbas for talks leading to the establishment of a unity Government for all of Palestine moves also in the direction of reducing violence and allowing the civilian population living under Israeli occupation to have somewhat improved prospects that their human rights will be protected. A viable peace process depends, among other conditions, on achieving unified representation for all Palestinians living under occupation.

15. There have also been some encouraging developments in the region that might indirectly lead to improvements in the occupation regime, although, to date, the developments on the ground have not borne out those hopes. The negotiation of an agreement between Hizbullah and the Government of Lebanon offers some basis for greater stability. The ongoing negotiations between Israel and the Syrian Arab Republic, as mediated by Turkey, also suggest a renewed reliance on a diplomatic approach to unresolved conflicts, and some willingness by the State of Israel to

[5] For an early assessment of the ceasefire, see an article by Joshua Mitnick, "As Gaza ceasefire holds, Israel eases economic blockade", *Christian Science Monitor*, 23 June 2008.

consider withdrawing from territory occupied in the 1967 war. Egyptian initiatives with respect to the situation in Gaza are also part of that more constructive atmosphere in the neighbourhood of the Occupied Palestinian Territory, but so far, the occupied Palestinians have not experienced any benefits, and in many respects, the situation has continued to deteriorate.

16. The end to occupation is the only path to full restoration of the human rights of the Palestinian people. According to doctrine, international law requires an Israeli withdrawal from substantially all occupied Palestinian territory, including East Jerusalem, in accordance with the iconic call of Security Council resolution 242 (1967), which was adopted in the aftermath of the 1967 Arab-Israeli war. But withdrawal has been deemed extremely unlikely without bilateral negotiations that address, all issues in dispute between Israel and the Palestinian Authority. From that perspective, it had seemed somewhat optimistic to view the Annapolis conference of 27 November 2007 that brought together some 40 concerned Governments as a revival of the peace process along the lines set forth by the Quartet in its road map of 2003. At Annapolis, there was a joint understanding of the participating Governments that Israel and the Palestinian Authority would seek to resolve all outstanding issues, and there was an apparent shift by the Government of the United States towards an encouragement of bilateral negotiations. There have ensued frequent meetings between the Israeli Prime Minister, Ehud Olmert, and the President of the Palestinian Authority, Mahmoud Abbas, but no sign of notable breakthroughs on final status issues and little prospect that that negotiating track will produce meaningful results. That is a reflection of the weakness of Prime Minister Olmert in view of internal Israeli opposition, his embattled position and his announced plans to resign after the Kadima Party meetings in September 2008. More fundamentally, Israel has without doubt failed the litmus tests set up at Annapolis for a peace process that involved a complete freeze on Israeli settlement expansion (along with the dismantling of so-called outposts, that is, settler land occupations throughout the West Bank regarded as unlawful under Israeli law) and a reduction of checkpoint constraints on freedom of movement. The pattern since Annapolis is, instead, one of continuous Israeli settlement expansion at an accelerated pace, with no reports of outposts being dismantled, and an increase in the number of cumbersome restraints associated with Israel's network of military checkpoints.

17. The second litmus test set was the reduction of Palestinian violence. Here, the Gaza ceasefire, if it holds, seems extremely relevant, as does the resolve of the Palestinian Authority to implement to the best of its ability a policy of abandoning armed struggle against the Israeli occupation. But without comparable Israeli moves on settlements, the process is likely to be indefinitely stalled or abandoned. At present, there is no basis for optimism that the Annapolis initiative will lead to a timely end to the occupation, to peace or to respect by Israel for the rights of the Palestinian people according to the requirements of international humanitarian law and the legal standards of international human rights.

III. Significant human rights challenges: some case studies

A. Freedom of expression and harassment of media personnel: the case of Mohammed Omer

18. Mohammed Omer is a journalist who obtained an exit visa from Gaza, where he lives, to receive the Martha Gellhorn Prize for Journalism and to accept invitations to speak in Europe. His visa was issued after a considerable lobbying effort by a Dutch parliamentarian to persuade the Government of Israel to allow Mr. Omer to leave Gaza. The Gellhorn Prize for Journalism is given to a journalist who displays courage and ability in covering war zones, and Mr. Omer is the youngest recipient to be so honoured. On the basis of direct contact with Mr. Omer and a variety of distinguished persons to whom he is known, it is clear that Omer, a young man of 24, is widely admired for his personal qualities and his journalistic abilities, displayed in recent years in his reporting on the situation in Gaza. Mr. Omer's difficulties occurred on his return to Gaza, when he tried to pass through Israel from the Allenby Bridge crossing so as to enter Gaza. He reached the Jordanian border without the benefit of Dutch diplomatic escort, which arrived at the border late. According to Mr. Omer, the lack of a Dutch diplomatic escort left unfulfilled a commitment made to him when he was encouraged to leave Gaza to accept the award. The events in question took place on 26 June 2008, and have been reported in newspapers around the world. By private communication, the Special Rapporteur has been assured by the Dutch ambassador in Geneva that the incident is being taken "extremely seriously" and that an explanation is being sought from the Government of Israel. I have reinforced that request with an urgent appeal to the ambassador of Israel in Geneva. To date, no response has been received to either request for an account and explanation. Mohammed Omer has published his own version of the events, from which the following passage is taken:

> "Upon my return from London I was stripped naked at gunpoint, interrogated, kicked and beaten for more than four hours. At one point I fainted and then awakened to fingernails gouging at the flesh beneath my eyes. An officer crushed my neck beneath his boot and pressed my chest into the floor. Others took turns kicking and pinching me, laughing all the while. They dragged me by my feet, sweeping my head through my own vomit. I was told later they transferred me to a hospital ... Today I have difficulty breathing. I have abrasions and scratches on my chest and neck. My doctor informed me that due to nerve damage from one kick, I may be unable to father children and will need to have an operation."[6]

Mr. Omer is convinced that the brutal assault on his person was carried out by Shin Bet personnel who were fully aware that he had received the Gellhorn Prize while abroad, and were attempting to confiscate the award money, but were frustrated because it had been deposited in a bank account and was unavailable. After the experience at Allenby, Mr. Omer reportedly lost consciousness, was transferred to a Palestinian hospital in Jericho on the West Bank, and was then moved to the Erez crossing, from where he was again transferred for treatment to the European Hospital at Khan Younis refugee camp.

---

[6] Mohammed Omer, "Truth and Consequences Under the Israeli Occupation", *The Nation*, 31 July 2008.

19. The unfortunate incident described above cannot be discounted as an accident or an anomaly involving undisciplined Israeli security personnel. The treatment of Mr. Omer seems to have been motivated by Israeli anger over international recognition of his journalism describing the occupation of Gaza, his willingness to repeat his descriptions abroad and his dedication and intention to continue in the professional role of bearing witness to the excesses of the occupation. It should be noted that all Palestinians are subject to arbitrary harassment and abuse at borders and checkpoints, although the hostility towards journalists seems particularly severe. During his time in Europe, Mr. Omer spoke before European parliamentary audiences, describing the suffering in Gaza caused by the siege, closures and fuel and food shortages. It should be noted that Mr. Omer was not charged with any offence, nor was he carrying any prohibited materials. His treatment as described appears to constitute a flagrant violation of article 3(1)(a)(c) of the Fourth Geneva Convention, which reads, in part, "... The following acts are and shall remain prohibited at any time and in any place whatsoever ... (a) violence to life and person ... (c) outrages upon personal dignity, in particular humiliating and degrading treatment". Article 5 of the Universal Declaration of Human Rights is also relevant, as it proscribes "... cruel, inhumane or degrading treatment or punishment". More directly responsive to Mr. Omer's situation are article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights (1966). Article 19 (2) of the Covenant has been interpreted to apply in particular to journalists who strive to uphold rights "to receive and impart information of all kinds ... in writing or in print ... or through any media of his choice". Additionally, article 13 (2) of the Universal Declaration of Human Rights confirms the right of a person to return unimpeded to his or her country of residence. "Everyone has the right to leave any country, including his own, and to return to his country." That right was grossly violated in the case of Mr. Omer.

20. Although the incident affected only one individual, it inevitably has a chilling effect, and appears to be part of a broader pattern of Israeli punitive interference with independent journalistic reporting on the occupation. Amnesty International responded to the lethal shooting of a Reuters cameraman in April 2008 by an Israeli tank, saying, "Fadel Shana appears to have been killed deliberately although he was a civilian taking no part in attacks on Israel's forces". In August, the tank crew responsible for Mr. Shana's death was officially cleared of wrongdoing in a letter written by the Israeli Advocate-General, Brigadier General Avihai Mendelblit, prompting the Editor-in-Chief of Reuters, David Schlesinger, to respond, "I'm extremely disappointed that this report [by the Israeli military] condones a disproportionate use of deadly force in a situation that the army itself admitted has not been clearly analysed". There are other criticisms of abusive Israeli behaviour towards Palestinian and foreign journalists in Gaza and the West Bank issued by such respected organizations as Reporters Without Borders and the Committee to Protect Journalists. In sum, the experience of Mohammed Omer appears to be only the most recent example of a pattern of official Israeli conduct interfering with press freedoms under conditions of occupation, thereby depriving the Palestinian population of whatever protection might result from exposing abuses of authority by the occupying Power. The United Nations has a clear responsibility and definite obligation to protect independent journalism, especially in war zones and areas under occupation, as part of its commitment to human rights and international law.

B. Closures and Israeli Defense Forces military operations in the West Bank: abuses against the civilian population in Nablus

21. The continuing encirclement of the main West Bank cities through the extension of the separation wall and the maintenance of checkpoints mean that exit and entrance remain difficult and humiliating. Even the ongoing peace talks between Prime Minister Olmert and President Abbas, the stated commitment by the Government of Israel to reciprocate for the renunciation of armed resistance by the Palestinian Authority by easing restrictions on movement on the West Bank and the marked decline of Palestinian acts of violence in the West Bank and Gaza have not eased the ordeal facing Palestinians under occupation. Cities and towns where Hamas influence is believed to be strong, as evidenced by success at the municipal level in the 2006 elections, have been placed under particular pressure as a result of frequent military incursion. Nablus is a case in point. The Special Rapporteur has received reports under oath from non-Palestinian observers of the situation in Nablus. The reports prove that Israel has used force continuously against the civilian population of Nablus without even claiming justification on the basis of prior resistance activities. From 26 June until late July of 2008, the Israeli Defense Forces carried out a series of nightly military operations in Nablus that led to the killing of at least two young Palestinians, the arrest of dozens of men, women and children and the confiscation and destruction of property, and generated an atmosphere of fear. Those military actions have taken place without any explicit charges brought against the residents of Nablus. The damage included the destruction of property belonging to several charitable organizations, including schools, clinics and an orphanage that had been providing necessary services to the population in Nablus. Those institutions were arbitrarily closed, as was the Nablus Mall, which contained some of the city's oldest, most respected and prosperous commercial establishments. The property of important business entities was requisitioned by Israeli military authorities without due process or any credible security justification. The overall impact of those Israeli activities has been to reduce by some 50 per cent the economic activity of the city, which previously had been regarded as the commercial centre of Palestine. Beyond those material losses inflicted by recent occupation policies and the psychological harm caused by the terrifying experience of daily late-night military incursions by heavily armed Israeli forces, there is the growing sense of physical isolation produced by the numerous checkpoints and roadblocks that surround the city.

22. Closures of charitable and other civil institutions by the Israeli military have taken place in other cities throughout the West Bank in the last several months. They are illustrative of the deterioration of the conditions of occupation in that part of the Palestinian territory and of the occupying Power's two-tier violation of Palestinian human rights and of Israeli obligations under the Fourth Geneva Convention. That is, Israel is not only failing to fulfil its legal obligations as the occupying Power under international humanitarian law, but is also obstructing Palestinian efforts to mitigate the impact of those violations on the well-being of Palestinians enduring occupation. Because the situation in Gaza has been so extreme in the last year, with real fears of societal collapse, massive famine and widespread disease, there has been a comparative lack of attention to the hardships and suffering endured in the West Bank.

23. The United Nations has an independent obligation to protect the human rights of an occupied population, including ensuring that the rights of all sectors of the population are upheld, and not focusing only on those who face imminent humanitarian catastrophe. The occupation policies pursued by Israel are in violation of the spirit and the letter of international humanitarian law as set forth in articles 47 to 78 of the Fourth Geneva Convention. Article 53 is particularly relevant, requiring an occupying Power to refrain from destroying property of the occupied population unless "such destruction is rendered absolutely necessary by military operation". The effect of the military closure operations was to destroy property belonging to the residents of Nablus. Articles 64 to 69 provide a legal framework for holding persons in the occupied territory criminally responsible for their alleged wrongdoing, if any, but the Convention unconditionally prohibits extrajudicial killing, reprisals and all forms of collective and punitive violence. Noted Israeli journalist Gideon Levy, writing in *Ha'aretz* on 20 July 2008, observed that West Bank Palestinian civilians "cannot be simultaneously imprisoned, prohibited from earning a living and offered no social welfare assistance while we strike at those who are trying to do so, whatever their motives. If Israel wants to fight the charitable associations, it must at least offer alternate services. On whose back are we fighting terror? Widows? Orphans? It's shameful." The moving report prepared by Mairead Maguire, Nobel Peace Prize laureate from Northern Ireland, addressing the closing of the Hebron orphanages, expresses similar views.[7]

C. Right to peaceful assembly: demonstrations against the wall in the West Bank

24. Ni'lin is a village situated in the Ramallah district of the West Bank near the wall that Israel has been unlawfully constructing on Occupied Palestinian Territory in defiance of the July 2004 advisory opinion of the International Court of Justice. It has been the scene of numerous non-violent demonstrations against the construction of the wall that was built in such a way as to confiscate significant portions of the land belonging to the village. That is part of a longer story of land dispossession that has afflicted the Palestinians.

25. It is estimated that as much as 80 per cent of the land belonging to Ni'lin has been incrementally confiscated by Israel, starting in 1948. After the 1967 war, the location of Ni'lin near the Green Line led to further land confiscations on behalf of West Bank settlements (74 dunams for the settlement of Shalit, then 661 dunams for Mattityahu, 934 dunams for Hashmonaim, 274 dunams for Mod'in Illit, 20 dunams for Menora), which took about 13 per cent of the village land. When a further 20 per cent of Ni'lin land, belonging to its residents, was officially slated for confiscation by Israel for the construction of the wall, strong demonstrations took place. Ni'lin became the inspirational centre of opposition to the wall and, during 2003-2004, it was the scene of numerous anti-wall demonstrations. In recent months, there have been protests by people living in the village and supporters from neighbouring cities such as Ramallah and Tulkarem, and also by Israeli peace activists who have come to Ni'lin to join in the non-violent demonstrations seeking to prevent the resumption of construction of the wall.

[7] Report on destruction of Muslim charitable institutions in Hebron by Israel, 5 June 2008.

26. Israeli military forces, including border police, have used a variety of violent means to disperse the demonstrators, including rubber-coated steel bullets and live ammunition. Two young Palestinians have died from gunshot wounds. Ahmed Mousa, a 10-year-old boy photographed at the demonstration, was killed, according to witnesses, as he was leaving the demonstration. A widely respected Israeli participant in the demonstrations, Uri Avnery, a former member of the Knesset, wrote in an article for the Ma'an News Agency, dated 3 August 2008, "A soldier aimed and shot the child with live ammunition at close range". Those who saw the boy described his face as "shot off". Mustafa Barghouti, a prominent Palestinian parliamentarian, was quoted as saying "Israel is trying to provoke peaceful demonstrators into using violence". A few days later, a second Palestinian, 19-year-old Yousef Akmada Omaira, also died from head wounds received while taking part in the funeral of Ahmed Mousa.

27. From the perspective of international human rights law, the residents of Ni'lin were entitled to demonstrate peacefully against a clearly unlawful extension of the occupation associated with the construction of the wall on occupied Palestinian land that was proceeding in defiance of the advisory opinion if the International Court of Justice and its overwhelming endorsement by the General Assembly.[8] In addition, the Israeli use of excessive force, especially when it appears to deliberately seek to kill or maim demonstrators, including children, nullifies any claim that the police and military actions taken were necessary for purposes of security and public order. It is a basic right of people to defend their land against its unlawful seizure, and that right pertains in circumstances of occupation where there exists a legal regime in the form of the Fourth Geneva Convention deliberately designed to preserve the character of the occupied territory and uphold the interests of its citizens. In response to Palestinian legal initiatives, Israeli authorities have relocated segments of the wall to limit interference with Palestinian agricultural activity in Nil'in and Qalqilia.

IV. Settlements in the Palestinian territories and their impact on the enjoyment of human rights

28. The continued expansion of unlawful Israeli settlements on the West Bank and in Jerusalem constitutes a serious pattern of unlawful conduct on the part of the occupying Power and a disregard of Israel's own international undertakings to freeze settlement growth and remove "outposts" on the West Bank established without proper Israeli authorization. Additionally, the extent and scope of the Israeli settlement programme, including the creation of security arrangements and bypass roads, tunnels and bridges, is a decisive impediment to the establishment of peace between Israel and Palestine, as well as a source of daily friction under conditions of occupation. The unlawfulness of settlements anywhere in the Occupied Palestinian Territory, including East Jerusalem, has long been established by a consensus of international law specialists, and confirmed by resolutions of the

[8] *Legal Consequences of a Wall in the Occupied Palestinian Territory*, International Court of Justice advisory opinion, 9 July 2004; General Assembly resolution ES-10/15 called upon the parties to comply with the obligations as set forth in the advisory opinion. Israel has rejected the authority of the advisory opinion, and has proceeded with the construction of further segments of the wall.

General Assembly and the Security Council. That conclusion is most clearly supported by article 49 of the Fourth Geneva Convention, which prohibits the occupying Power from transferring "parts of its own civilian population into the territory it occupies".

29. Unfortunately, the diplomatic situation bearing on the settlements was clouded by an exchange of official letters between Ariel Sharon, then Prime Minister of Israel, and George W. Bush, President of the United States of America, on 14 April 2004. The letters were widely interpreted as signalling an American acceptance of the permanent annexation by Israel of the large Israeli settlements near the 1967 borders, 80 per cent of the total settler population, as well as in the occupied portions of Jerusalem. It should be noted that while such letters may have political weight for the two Governments, they carry no legal weight, and can certainly not compromise Palestinian rights under international humanitarian law. In that basic sense, the letters are irrelevant to any legitimate peace process, and United Nations participation should reflect an understanding of the inability of the letters to impinge upon Palestinian rights.

30. It is significant that even discounting the legal importance or moral weight of these letters, an Israeli undertaking on the settlements was set forth in Prime Minister Sharon's letter, but it had no discernible effects on behaviour. Sharon indicated an awareness of "the responsibilities facing the State of Israel". Among them are "limitations on the growth of settlements; removal of unauthorized outposts". Those responsibilities were reaffirmed by the current Israeli Government at Annapolis, but, again, have not been implemented to the slightest degree. To the contrary, settlement growth as measured by population, but even more so, by land acquisition, mainly by expropriation and seizure, and development has continued at an accelerated pace.

31. That pattern, and the resulting cantonization of Palestinian daily life, is increasingly seen as sending a message to the Palestinians that the two-State solution to the conflict is no longer viable, despite the fact that it remains the stated policy of the Quartet, the Annapolis Understanding and most commentary on the goals of the peace process. Among the disquieting aspects of the letter of President Bush is its support for shaping Israel's eventual withdrawal obligations "In light of new realities on the ground, including major Israeli population centres." There is no mention of the constant reminders to the Government of Israel that its settlement policy is incompatible with its obligations under international humanitarian law and with specific United Nations resolutions.

32. The extent of the settlement encroachment on West Bank and East Jerusalem territory is difficult to calculate with precision owing to the continuous process of expansion. The prevailing best estimate is that settlement land claims (together with Palestinian land seized for the construction of the separation wall) have led to the confiscation of 14 per cent of the territory of the West Bank, which itself represents only 22 per cent of the original British Mandate of Palestine. According to recent figures, there are currently some 200 settlements, 100 outposts and 29 Israeli military bases. The cost of sustaining the settlement network is about $556 million per year, and the number of settlers is estimated to be between 480,000 and 550,000. The rate of settlement expansion is placed at approximately 4 per cent per year, both with respect to land and population. There are a variety of special problems raised by the settlements that contribute to violence, both the violence of settlers towards

Palestinians, and the violence of Palestinian resistance. The city of Hebron has been a persistent flashpoint and the scene of repeated violent incidents and tragic deaths, where 700 settlers are protected by 300 Israeli soldiers in a city of 150,000 Palestinian inhabitants. Perhaps, the most telling statistic (compiled by the United Nations Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory) is that Palestinian land taken by Israel for settlements, for closed military zones (including almost the entire Jordan Valley), and for Israeli-declared nature preserves now renders 40 per cent of the West Bank inaccessible and unusable for residential, agricultural, commercial or municipal development.

33. The expansion of settlements has been particularly notable in East Jerusalem. The Jerusalem District Planning and Construction Committee recently approved 1,800 new housing units (920 in Har Homa/Jabal Abu Ghneim, 880 in Pisgat Ze'ev). The expansion also furthers the Israeli policy of making East Jerusalem into a place of majority Jewish residence, and is accompanied by expulsions of Palestinians. In addition, the presence of 250,000 Jews living "illegally" in East Jerusalem is being overlooked.

V. Health crisis in the Palestinian territories

34. There is a consensus among specialized observers that a persistent health crisis exists in both Gaza and the West Bank. It is multidimensional, and there is a serious risk of a complete collapse of the basic health system, with disastrous consequences for the Palestinian population.

35. The basic economic and social situation in the Occupied Palestinian Territory is characterized by extremely high unemployment and poverty rates, especially in Gaza. According to both United Nations and World Bank sources, the poverty rate for the West Bank and Gaza combined is currently 59 per cent, and food insecurity affects at least 38 per cent of the overall population of the Occupied Palestinian Territory. The unemployment level in Gaza is officially listed at 45 per cent, the highest in the world, but even that figure understates the true level for a variety of reasons. It is reported that 95 per cent of the factories in Gaza are now closed owing to the siege. The World Bank has suggested that that set of conditions could produce an "irreversible" economic collapse.

36. Israel has classified Gaza as an "enemy entity" since Hamas took over in mid-June 2007, and has justified restricting food and fuel provision to levels sufficient to sustain bare survival. According to available statistics, Gaza is receiving only 30 per cent of its fuel needs per week, and, in particular, receives insufficient quantities of cooking oil and diesel fuel. The designation of "enemy state" has also led Israel to block payment of customs revenue that belongs to the Palestinians, and both Europe and the United States of America suspended their economic assistance to Gaza.

37. Medical supplies and essential equipment are often not available owing to an inability to import spare parts or obtain replacements. Ill Gazans in need of specialized medical attention not available in Gaza have great difficulty acquiring exit permits to obtain treatment in Israel, and many have died because they did not receive timely medical attention. The obstacles confronting ill Palestinians in Gaza needing treatment in Israel are discussed in paragraph 46. According to the Gaza Community Mental Health Programme, the cumulative effect of those conditions has had "serious mental consequences [for] the Palestinian people, [with the]

majority of civilians ... suffering from feelings of anger, anxiety, panic, depression, frustration and hopelessness as a result of Israeli occupation practices, [the] siege and poverty".

38. The situation in the West Bank is less dramatically bad as far as conditions of health are concerned, but is still far below minimum international standards. Unemployment is at 25 per cent, even with economic assistance flowing to the Palestinian Authority, but closures and cantonization make it difficult and often impossible to sustain gainful economic activity. A basic difficulty is associated with the combination of checkpoints, roadblocks and permit requirements that impede movement to and from medical facilities even within the West Bank, especially from villages and refugee camps surrounding the larger towns and cities where hospitals and other medical facilities are located. The restrictions also make access to Israel very difficult, and often impossible, for most Palestinians living in the West Bank. It is widely reported that those conditions are causing a variety of ailments, especially in children suffering from malnutrition and trauma.

39. The Government of Israel denies any responsibility as the occupying Power for the severe substandard health conditions. With respect to Gaza, it claims that as of 12 September 2005 it is no longer the occupying Power as discussed in paragraph 5, and thus is no longer legally accountable for any adverse consequences experienced by the inhabitants of Gaza. Israel also argues that since the Hamas takeover, it has pursued a counter-terrorist policy towards Gaza that bears a resemblance to war, as in "the war on terror". From the perspective of international law, Israel remains the occupying Power, and hence is subject to the Fourth Geneva Convention, which in articles 13 to 25 emphasizes in detail the legal duty of the occupying Power to ensure the health of the population subject to occupation.

40. That set of obligations has particular relevance to the Occupied Palestinian Territory in view of the prolonged nature of the occupation, and, with respect to Gaza, the additional acute impact of Israeli policies that adversely affect the health and well-being of the entire Gazan population. Article 16, for instance, reads as follows: "The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect". That obligation is reinforced by article 25 (1) of the Universal Declaration of Human Rights, which declares: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

41. Perhaps the clearest articulation in international law of the right to health is to be found in article 12 (1) of the International Covenant on Economic, Social and Cultural Rights, which reads, in part, "The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Article 12 (2) (b) and (d) are also relevant, reading, in part, "The steps to be taken by the States parties to the present Covenant to achieve full realization of this right shall include those necessary for: (b) The improvement of all aspects of environmental and industrial hygiene; ... (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness".

42. Israel is a party to that treaty instrument, and is bound by the basic standards it affirms, which are in any event expressive of legal obligations embodied in customary international law. Overall, the obligations of international humanitarian law and of human rights standards are especially applicable in conditions of a fiduciary role as it is exercised by an occupying Power towards a captive population.

43. The whole approach taken towards Gaza by Israel and by the United States of America and the European Union, since the Hamas electoral victory in January 2006, involves a massive and unlawful systematic violation of article 33 of the Fourth Geneva Convention, which unconditionally prohibits collective punishment: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited". More practically, medical specialists continually warn that the health system in Gaza is precarious, often described as being on "the verge of collapse" or "unsustainable".

44. The experience of the West Bank, despite the absence of a systematic siege or the denial of funds needed to sustain health care, bears many resemblances to the situation in Gaza, although Israel makes no claim that it is not still the occupying Power in the West Bank. In the West Bank, the policies of the Government of Israel which punish the Palestinian population as a whole are routinely justified as necessary for the security of the occupation, including the settlements, and for Israel itself. Those security claims themselves, whatever their validity when independently asserted, have to be weighed in context against the harm caused to the occupied people. That was done by the International Court of Justice in relation to the wall (see para. 3), and the Israeli claim was rejected, especially as Israel had constructed the wall in Occupied Palestinian Territory and used the land confiscated for expansion of settlements, itself an unlawful purpose completely unrelated to legitimate security claims. Mental health treatment and access to medical facilities, especially in the face of health emergencies, have been particularly impeded by the ubiquitous restrictions on movement throughout the West Bank as a result of checkpoints, roadblocks and closures. Such restrictions seem excessive, and have been frequently observed, combined with a variety of intimidating and humiliating practices which discourage Palestinian movement in the West Bank. Over time, the situation is causing serious damage to the health of inhabitants. The regime of confinement amounts to collective punishment, and violates article 13 (1) of the Universal Declaration of Human Rights, which states, "Everyone has the right to freedom of movement and residence within the borders of each State".

45. In sum, the forms that the occupation has taken in Gaza and the West Bank have put severe strains on the maintenance of the physical and mental health of Palestinians living under occupation. The harmful effects have been particularly severe for children. It is notable that, given the length of the occupation, the overwhelming majority of Palestinians in Gaza and the West Bank have spent their entire lives under occupation. At a conference held in East Jerusalem, the Special Rapporteur was particularly struck by the comment of a West Bank professor who teaches at Bir Zeit University who said, "I am 43 years old, and I have not had a happy day in my entire life". In that respect, beyond statistics, the oppressiveness of a sustained and relentless military occupation is not consistent with maintaining basic mental and physical health.

A. Further infringements affecting medical patients from Gaza: Shin Bet interrogation of Palestinian medical patients at the Erez crossing

46. Physicians for Human Rights-Israel issued a report on 4 August 2008 that contains the testimony of 32 Gazan medical patients who were interrogated at the Erez crossing. The report is based on information received since July 2007. The individuals were seeking entry to Israel to receive urgent medical treatment unavailable in Gaza for serious, often life-threatening conditions, and claimed to have been subject to harsh and improper questioning in intimidating circumstances by members of the Israeli General Security Service (Shin Bet). The testimonies exhibit a consistent Israeli insistence that the individual seeking an exit permit would have to wait indefinitely unless he or she agreed to supply the General Security Service with requested information and/or collaborate in the future with the Security Service. The report also states that a number of Gazans decided to forego medical treatment rather than endure interrogation, despite the likely disastrous health consequences of such a decision. One person said, "Afterwards, the interrogator told me, 'you are sick with cancer and soon it will spread to your brain. As long as you do not help us — [you will] wait for [the opening of] Rafah crossing'". The remark was typical of the testimony gathered for the report.

47. The Government of Israel has responded to the allegations contained in the report of Physicians for Human Rights-Israel, contending that its behaviour is within its sovereign rights, and is reasonable given the dangerous security conditions, such as Hamas attacks directed at the Erez crossing, where the interrogations take place. The main Israeli claims are that it no longer has any responsibility for what takes place in Gaza, as it ceased being the occupying Power on 12 September 2005, that it has complete discretion to deny Gazans access to Israel on any ground whatsoever and that that conclusion has been supported by Israeli judicial authorities.

48. For purposes of international humanitarian law, the Gaza Strip continues to be under Israeli occupation (see para. 5). Accordingly, although not explicitly responsive to the situation under review, articles 55 and 56 of the Fourth Geneva Convention impose on an occupying Power a general legal duty to take all necessary measures to safeguard the health of persons being protected.

49. Depending on how the attempted extortion of information and collaboration in exchange for exit permits to receive medical treatment is viewed, it would appear to be in violation at least of article 3 (1) (c), which prohibits "cruel treatment and torture", as does article 5 of the Universal Declaration of Human Rights. Perhaps the most relevant legal text is the United Nations Convention against Torture, which lays out a broad set of requirements to avoid an inference of "torture or other cruel, inhuman or degrading treatment". Article 1 connects torture and related treatment to behaviour by a public official that can be either "physical or mental" in the course of interrogation that seeks information by a variety of forms of intimidation; other provisions of the Convention against Torture impose a variety of legal duties on the State, and confer rights on aggrieved individuals.

50. The Special Rapporteur concludes that Israeli interrogation practices as reported by Physicians for Human Rights-Israel on the basis of Gazan testimonies strongly suggest violations of Israel's legal responsibilities as occupying Power. The Israeli responses are not satisfactory because they rest on the premise that Gaza is

no longer occupied. Additional disturbing news indicates that six seriously ill Gazans died in one 24-hour period while they were awaiting permission to travel. According to the Free Gaza Movement, 233 severely ill Gazan patients have died while delayed in their attempts to leave Gaza for necessary medical treatment during the period of the siege.

VI. Recommendations

51. The following recommendations drawn from the body of the report are emphasized as matters of urgency:

(a) **The General Assembly should ask the International Court of Justice for a legal assessment of the Israeli occupation of Palestine territory from the perspective of the Palestinian right of self-determination;**

(b) **The assistance of the Security Council should be sought in the implementation of the 2004 advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*;**

(c) **In the light of persisting gross violations of the Geneva Conventions over a long period of time, serious consideration should be given to the legal obligations of the parties to these treaties "to ensure respect" for the substantive undertakings as called for in common article 1. An initial step might be to urge the Government of Switzerland, as repository for the Geneva Conventions, to convene a meeting of States parties with the purpose of exploring how to carry out their legal duties, given the persistent and severe violation of the legal regime of occupation by Israel;**

(d) **Serious note should be taken by all relevant agencies of the United Nations of the failure of Israel to fulfil its pledges at the Annapolis summit to halt settlement expansion, to ease freedom of movement on the West Bank and to attend to the humanitarian needs of the Palestinians under occupation;**

(e) **The United Nations should explore its own responsibility with respect to the well-being of the Palestinians living under unlawful conditions of occupation, particularly bearing on abuses of border control, freedom and independence of journalists, and the general crisis in health care, especially in Gaza;**

(f) **In view of the health crisis in Gaza, members of the international community, including the United Nations, should resume economic assistance as a matter of the highest priority. In the face of an impending humanitarian catastrophe, the responsibility to do what is possible to mitigate human suffering is serious. It is a responsibility towards the civilian population of Gaza, and is not dependent on whether Hamas satisfies the political conditions set by Israel, nor is it dependent on whether the ceasefire holds.**